

## Chapter IV

# The question of defining aggression

### Consideration by Special Committee

The Special Committee on the Question of Defining Aggression met at United Nations Headquarters, New York, from 31 January to 3 March 1972, pursuant to a General Assembly decision of 3 December 1971.<sup>1</sup>

The Special Committee re-established a Working Group which was instructed to formulate a definition of aggression; in case it was unable to reach such a definition, it was to report to the Special

Committee its assessment of the progress made during the session, indicating the points of agreement and of disagreement. The Working Group was composed of the following Member States: Cyprus, Czechoslovakia, Ecuador, France, Ghana, Italy, Mexico, Spain, the Syrian Arab Republic, the USSR, the United Kingdom and the United States.

<sup>1</sup> See Y.U.N., 1971, p. 601, text of resolution 2781(XXVI).

The Working Group held 14 meetings between 4 and 29 February 1972. After a brief exchange of views on the general definition of aggression and on the principle of priority, the Working Group considered in greater detail the principle of proportionality, the legal consequences of aggression and the right to self-determination.

In addition to formal meetings, members of the Working Group held informal negotiations concerning various elements of the definition. The informal negotiating group submitted a report to the Working Group, which the latter decided to transmit without comment to the Special Committee. In so doing, the Working Group took the view that the report constituted a step forward in the formulation of a generally acceptable definition of aggression.

The Working Group's report, including a summary of the report of the informal negotiating group, was considered by the Special Committee at meetings held on 1 and 2 March 1972. On 2 March, the Special Committee approved the report of the Working Group, which it annexed to the report on the work of its 1972 session.

Also annexed to the Special Committee's report were three draft proposals concerning the definition of aggression, which had been put forward in the Special Committee, in 1969, by the following members, respectively: (a) the USSR; (b) Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia; and (c) Australia, Canada, Italy, Japan, the United Kingdom and the United States.<sup>2</sup>

Also on 2 March 1972, the Special Committee unanimously adopted a resolution by which it noted the common desire of its members to continue their work and to arrive at a draft definition of aggression, and recommended to the General Assembly that the Committee be invited to resume its work in 1973. The resolution was sponsored by Czechoslovakia, Mexico, Romania and the Syrian Arab Republic.

### Consideration by General Assembly

The report of the Special Committee on the work of its 1972 session was considered by the General Assembly's Sixth (Legal) Committee at meetings held between 31 October and 24 November 1972.

#### General aspects of definition of aggression

Most representatives who participated in the discussion in the Sixth Committee stressed the importance of arriving at a definition of aggression. The USSR, for example, made the following points: a definition of aggression would have a

considerable impact at a time of easing of international tensions; it would enhance the effectiveness of the United Nations as an instrument for the maintenance of peace; it would provide the Security Council with positive guidance and make the existence of acts of aggression easier to determine; it would indicate to States how far they might properly go in the exercise of their right to self-defence; and it would make an important contribution to the codification and progressive development of international law. The USSR felt that it was essential, especially for the sake of the developing countries, that a definition of aggression be worked out as soon as possible. The representatives of Greece, India, Iraq and Madagascar were among others who felt that a definition of aggression would be useful.

Other representatives—including those of Australia, Belgium and the United States—continued to question the necessity or desirability of defining aggression. Australia held that Article 2(4) of the United Nations Charter provided sufficient direction to the Security Council in determining acts of aggression.<sup>3</sup> Belgium expressed doubts about the feasibility of defining in a legal and abstract manner something which was constantly changing from the political viewpoint.

The United States said that, while it recognized that a definition of aggression might be of some utility in helping the United Nations to deal with certain types of situations, a more effective way to trigger the collective security mechanism might be to find that there had been a threat to or breach of the peace.

Most representatives stated that the Special Committee had made considerable progress towards reaching a generally acceptable definition. Some representatives, however, including those of Australia, Canada and Portugal, felt that the outcome of the Special Committee's 1972 session had been disappointing, and that if no progress was achieved in 1973 the General Assembly should consider whether to allow time for countries to take stock and seek to bridge their differences through informal negotiations.

While most Members agreed that a consensus definition was desirable, some Members—including Egypt, Iraq and Yugoslavia—held that if general agreement could not be reached the Special Committee should adopt a definition by majority vote.

#### Content of definition of aggression

During the discussion in the Sixth Committee, several views were expressed with regard to the

<sup>2</sup> See Y.U.N., 1969, pp. 768-71, and Y.U.N., 1970, pp. 792-93.

<sup>3</sup> For text of Article 2, para. 4 of the Charter and other Charter Articles referred to, see APPENDIX II.

definition of aggression and the powers of the Security Council.

In the opinion of the Belgian representative, a definition of aggression would be useful only if it respected the powers and duties of the Council; the exercise of those powers, which were political in nature, was a matter for the discretion of the Council, and it was therefore debatable whether it was possible to bind the Council by a definition. The representative of Greece held that the powers of the Security Council were not discretionary, because under Article 24 of the United Nations Charter the Council had only primary, and not exclusive, responsibility for the maintenance of peace. Iraq said that the Security Council should confine itself to verifying that acts of aggression had been committed, basing its action on the notion of aggression as deducible from international law; if the definition constituted a correct interpretation of the Charter, the Security Council would be under an obligation to apply it.

A number of representatives commented on the type of act that should be included in the definition. The representative of France said the definition of aggression could not be exhaustive and should contain a minimum list of the most serious cases of aggression, corresponding to Articles 39 and 51 of the Charter. Such a list could include the sending of armed bands by one State into the territory of another State, as well as some acts of indirect aggression which would be considered as such under Article 39 of the Charter but which would not confer the right of self-defence under Article 51.

The representative of the United Kingdom stated there was no basis in the Charter for limiting the interpretation of the term aggression to the direct, as distinct from indirect, use of force; moreover, in the modern world the indirect use of force was tending to take the place of direct aggression. Any definition of aggression should include both forms, since they were comparable in purpose and effect.

The representative of the United States also held that the Charter did not distinguish between different types of aggression; there was no provision enabling a State to escape from the Charter's condemnation of illegal acts of force by a judicious selection of means to an illegal end.

The representatives of Afghanistan, Cuba, India and Zambia, among others, expressed the opinion that the definition should not be limited to armed aggression but should take into account other forms—economic, political and cultural—which were equally dangerous.

Greece was one of several Members which

considered that the principle of priority—a fundamental criterion to be found in all systems of municipal law—was of paramount importance in any definition of aggression. The Philippine representative declared that the principle was the only objective criterion in identifying an aggressor, since it would prevent States from committing acts of aggression in the guise of preventive wars. Czechoslovakia observed that priority was only a presumption, since the State presumed to be the aggressor must be allowed the right to adduce proof to the contrary—for example, by showing that its act constituted self-defence.

Belgium expressed strong reservations about the possibility of a quasi-automatic application of the principle of priority in view of the complexity of actual situations. The United States believed that the remaining difficulties on the questions of priority and aggressive intent could be resolved on the basis of the progress achieved at the 1971 session of the Special Committee.

Ecuador and France, among others, were opposed to including aggressive intent in the definition. In Ecuador's view, the notion had no place in a definition, since it was a subjective element; an act of aggression came into existence as soon as it was committed, and the motives for it were totally irrelevant. France said further that the principle of priority was irreconcilable with the criterion of intent and that the two criteria should not be included in the definition on the same footing.

Other representatives held that the element of intent should be a fundamental ingredient of any definition of aggression. In this connexion, the United Kingdom said it was incorrect to equate the element of intent with subjectivity. The existence of intent must be inferred on the basis of objective analysis from the surrounding circumstances, as was normally the case in municipal law. The stated intention, although a factor to be taken into account, was not determinative and should be discounted when inconsistent with the weight of the evidence. There was therefore no ground for saying that the inclusion of the element of aggressive intent in a definition would enable a State to escape condemnation.

The question of the legitimate use of force was also raised by a number of Members. Regarding the right of self-defence, Romania stated that to define aggression was in effect also to define the right of self-defence of every State, as embodied in Article 51 of the Charter; the definition should be made an effective means of sanctioning the right of self-defence against the unlawful use of force. Egypt said that to dissociate the exercise of

the inherent right of self-defence from the provisions of Article 51 was to disregard both the letter and the spirit of the Charter. Kenya held that the right of self-defence under Article 51 existed independently of the Charter, which could not and should not be used as a pretext for enlarging the scope of what was recognized as the legal use of force, especially under Chapter VII of the Charter.

The representative of the USSR observed that the principle of proportionality had long been accepted in international law in connexion with the right of self-defence. However, under Article 51 of the Charter, the right of self-defence could be exercised only in response to armed aggression; that limitation had achieved the objective previously sought-by the principle of proportionality, which therefore should not be included in the definition.

Some representatives, including those of Greece and Zaire, favoured including the principle of proportionality in the definition, on the grounds that it would guarantee that a defensive action would remain defensive and would not be a cover for an aggressive act.

Several Members referred to the question of international organizations and organs empowered to use force. Hungary maintained that the Security Council alone had the authority to use force on behalf of the United Nations to maintain or re-establish international peace. Ecuador held that it was sufficient to state that the right to authorize the use of force was vested in the international community; it was unnecessary to specify which organ of the United Nations could exercise the right. Cuba was opposed to including in the definition of aggression a provision that would recognize the legitimacy of the use of force by regional organizations or by virtue of regional arrangements without the prior authorization of the Security Council.

In the opinion of a number of Members, including Iraq, Kenya, the Ukrainian SSR and Zambia, the definition of aggression should include a provision on the right of peoples to self-determination; the right of enslaved peoples to fight for their freedom and independence could in no way be considered an act of aggression, and this should be stated explicitly in any definition. The Ukrainian SSR, among others, held that the use

of force by peoples under colonial domination was justified under Article 51 of the Charter, since colonial domination was a form of continued aggression. Iraq said that military occupation was also a form of continued aggression, which gave its victims the right to seek to recover the territories occupied.

On the other hand, Portugal felt there was no basis in the Charter for linking the concept of aggression to the right to self-determination. The Charter did not permit any alternative to the peaceful settlement of disputes in the area of self-determination; nor could there be any exception to Article 2(4), which guaranteed respect for the principle of non-intervention in the internal affairs of States.

Some representatives believed that the definition should contain a provision concerning the legal consequences of aggression. Finland, for example, said that it was necessary to make it clear that no territorial gains or special advantages resulting from aggression would be recognized.

#### Decision by General Assembly

On 14 December 1972, the General Assembly (1) decided that the Special Committee on the Question of Defining Aggression should resume its work as early as possible after 1 April 1973; (2) requested the Secretary-General to provide the Special Committee with the necessary facilities and services; (3) decided to include the question of defining aggression in the provisional agenda of its 1973 session.

Those Assembly decisions were set forth in resolution 2967(XXVII), which was adopted, by a vote of 121 to 0, on the recommendation of the Sixth Committee.

The text was based on a proposal put forward in the Sixth Committee by the following 21 Members: Bulgaria, Cyprus, Czechoslovakia, Ecuador, Egypt, Guyana, Iran, Kenya, Madagascar, Mexico, Morocco, Nicaragua, Romania, Spain, Sudan, Uganda, the Ukrainian SSR, Uruguay, Yugoslavia, Zaire and Zambia.

The 21-power draft resolution was approved by the Sixth Committee on 24 November 1972 by a vote of 101 to 0, with 2 abstentions.

(For text of resolution, see DOCUMENTARY REFERENCES **below**.)

#### Documentary references

General Assembly—27th session  
Sixth Committee, meetings 1346-1352, 1366, 1371.  
Fifth Committee, meeting 1542.  
Plenary meeting 2109.

A/8701. Report of Secretary-General on work of the

Organization, 15 June 1871-15 June 1972, Part Four, Chapter IV A.  
A/8719. Report of Special Committee on Question of Defining Aggression, 31 January-3 March 1972.  
A/C.6/L.868. Bulgaria, Cyprus, Czechoslovakia, Ecuador, Egypt, Guyana, Iran, Kenya, Madagascar, Mexico,

Morocco, Nicaragua, Romania, Spain, Sudan, Uganda, Ukrainian SSR, Uruguay, Yugoslavia, Zaire, Zambia: draft resolution, as orally amended by sponsors and by Ghana, approved by Sixth Committee on 24 November 1972, meeting 1371, by 101 votes to 0, with 2 abstentions.

A/C.6/L.875, A/C.5/1478, A/8708/Add.13, A/8946. Administrative and financial implications of draft resolution recommended by Sixth Committee in A/8929. Statements by Secretary-General and reports of Advisory Committee on Administrative and Budgetary Questions and Fifth Committee. A/8929. Report of Sixth Committee.

Resolution 2967 (XXVII), as recommended by Sixth Committee, A/8929, adopted by Assembly on 14 December 1972, meeting 2109, by 121 votes to 0.

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its fifth session, held in New York from 31 January to 3 March 1972,

Noting the progress so far achieved by the Special Committee in its consideration of the question of defining aggression and on the draft definition, as reflected in its report,

Considering that it was not possible for the Special Committee to complete its task at its fifth session,

Considering that in its resolutions 2330(XXII) of 18 December 1967, 2420(XXIII) of 18 December 1968, 2549(XXIV) of 12 December 1969, 2644(XXV) of 25 November 1970 and 2781(XXVI) of 3 December 1971 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

Considering the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

Noting also the common desire of the members of the Special Committee to continue their work on the basis of the results achieved and to arrive with due speed at a draft definition in a spirit of mutual understanding and accommodation,

1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work at Geneva, in accordance with General Assembly resolution 2330(XXII), as early as possible after 1 April 1973;

2. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

3. Decides to include in the provisional agenda of its twenty-eighth session the item entitled "Report of the Special Committee on the Question of Defining Aggression."